

STATE OF NORTH DAKOTA
ATTORNEY GENERAL' S OPINION 88- 20

Date issued: August 29, 1988
Requested by: Tom Slorby, Ward County State' s Attorney

- QUESTION PRESENTED -

Whether a city may enact an ordinance prohibiting the possession of a loaded firearm on public property, or, without the consent of the owner or person in charge of such property, on private property.

- ATTORNEY GENERAL' S OPINION -

It is my opinion, except in cases where possession of a firearm is authorized by specific state legislative enactments, a city may enact ordinances prohibiting the possession of a loaded firearm on public property, or, without the consent of the owner or person in charge of such property, on private property.

- ANALYSIS -

N. D. C. C. ' 62.1-03-01(2)(a) authorizes a person to possess a loaded handgun, either in plain view or concealed, if that person possesses a valid North Dakota concealed weapons license. Concealed possession of any other firearm or dangerous weapon is permitted if the person in possession of the firearm or dangerous weapon possesses a concealed weapons license. N. D. C. C. ch. 62.1-04.

Although these statutory provisions authorize a person to carry a handgun, other firearm, or dangerous weapon concealed, they do not state where the handgun or other weapons may be possessed or carried.

Other provisions of law set forth specific places where firearms or other dangerous weapons may or may not be possessed. N. D. C. C. ' 62.1-02-10 authorizes a person to keep or carry a loaded firearm in or on any motor vehicle if that person possesses a concealed weapons license unless that person is in the field engaged in hunting or trapping activities. N. D. C. C. ' 62.1-02-10(3).

N. D. C. C. ' 62.1-02-04 prohibits a person from entering or remaining in that part of an establishment set aside for the retail sale of alcoholic beverages or used as a gaming site while in possession of a firearm or dangerous weapon unless that person is a law enforcement officer, the proprietor, the proprietor's employee, or a designee of the proprietor displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

In addition, N.D.C.C. §62.1-02-05 prohibits a person from possessing a firearm at a public gathering. Numerous exceptions are set forth in that law, including law enforcement officers, members of the United States or North Dakota armed forces when on duty, competitors participating in organized sports shooting events, gun and antiques shows, participants using blank cartridge firearms at sporting or theatrical events, any firearms carried in a temporary residence or motor vehicle, students and instructors at hunter safety classes, and private security personnel while on duty.

Other than these statutory provisions which relate to the possession of a firearm at a specific place, no state legislation has been enacted governing the possession of a loaded firearm on public property or, without the consent of the owner or person in charge of the property, on private property.

A city, whether or not that city has adopted a home rule charter, may not enact an ordinance which supersedes a state criminal statute. N.D.C.C. §12.1-01-05 provides:

12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance. No offense defined in this title or elsewhere by law shall be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section shall not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to so do by law.

A city does have the authority to adopt a penal statute when it is otherwise authorized by law to do so.

N.D.C.C. §62.1-01-03 defines the scope of a city's authority to enact ordinances regarding firearms. That section provides:

62.1-01-03. Limitation on authority of political subdivision regarding firearms. No political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

The specific language of N.D.C.C. §62.1-01-03 as adopted by the North Dakota legislature and that section's legislative history dictate the result reached in this opinion. The 1983 legislative session enacted House Bill No. 1445, codified at N.D.C.C. §62-04-06, which prohibited ordinances "relating to the purchase, sale, ownership, transfer of ownership, registration, and licensing of firearms and ammunition which is more restrictive than state law." 1983 N.D. Sess. Laws. ch. 692.

In preparation for the revision of the weapons laws, which would occur during the 1985 legislative session, an interim legislative committee had the occasion to reflect upon the 1983 enactment. The relevant portions of the committee hearing minutes note the following:

Senator Olson said House Bill No. 1445 does not regulate possession of firearms so cities could still pass ordinances on that topic.

Hearing on S. Con. Res. 4053 Before the Judiciary "B" Committee, 48th Leg., (August 18, 1983) at 12.

Senator Olson said Section 14 [of a proposed bill draft] confuses the issue concerning the city's right to pass ordinances relating to the possession of firearms. He said the intent of the law passed last session [House Bill No. 1445] was clearly to allow them to do so.

Hearing on S. Con. Res. 4053 Before the Judiciary "B" Committee, 48th Leg., (February 6, 1984) at 8.

In the 1985 legislative revision of the weapons laws, the language of House Bill No. 1445 was continued and incorporated without change into the provisions of N.D.C.C. § 62.1-01-03. In interpreting re-enacted statutes, a court will follow the statutory construction provided when the statute was previously in effect. Miller v. Norton, 132 N.W. 1080, 1087 (N.D. 1911). Clearly, the predecessor statute to N.D.C.C. § 62.1-01-03 was viewed and interpreted to allow a city to regulate the possession of firearms.

Clearly, a city may not adopt ordinances prohibiting the ownership of firearms, establishing permit procedures, or regulating those areas specifically prohibited by N.D.C.C. § 62.1-01-03. However, an examination of that section shows that any prohibition or limitation upon the power of a city to adopt an ordinance regarding the possession of a firearm, whether loaded or not, is conspicuously absent from that statutory provision. The authority to adopt an ordinance or ordinances regulating the possession of a loaded firearm, remains with the city except as otherwise may be specifically authorized and superseded by state law.

Both N.D.C.C. §§ 40-05-01 and 40-05.1-06(9), relating to home rule cities, provide the general police power of a city to protect the welfare of its citizens. N.D.C.C. § 40-05-01(33) provides:

40-05-01. Powers of all municipalities. The governing body of a municipality shall have the power:

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33. Public peace in municipality. To provide for keeping and preserving the peace and quietude of the municipality; to prevent disorderly conduct; to prohibit public intoxication; and to prevent and suppress riots, affrays, disturbances, and disorderly assemblies in any place.

N. D. C. C. § 40-05. 1-06(9) provides:

40-05. 1-06. Powers. . . .

9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

As long as a city acts within its legislatively authorized powers and does not supersede specific state criminal laws, the provisions of N.D.C.C. Title 62.1 do not prohibit a city from enacting an ordinance prohibiting the possession of a loaded firearm on public property or, without consent of the owner or person in charge of the property, on private property. Had the Legislature intended to prohibit a city from enacting an ordinance relating to the possession of a firearm, whether loaded or not, it could have easily accomplished that goal by including that prohibition within N.D.C.C. ' 62.1-01-03. It did not do so. Any further restriction on the authority of a city to enact an ordinance regulating the possession of firearms must be imposed by the state legislature.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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